

FCC MAIL SECTION

Federal Communications Commission

DA 99-1233

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DISPATCHED BY
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-232
Table of Allotments,) RM-9321
FM Broadcast Stations.)
(Fort Bridger, Wyoming and Hyrum, Utah))

NOTICE OF PROPOSED RULE MAKING**Adopted: June 16, 1999;****Released: June 25, 1999****Comment Date: August 16, 1999****Reply Comment Date: August 31, 1999**

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by L. Topaz Enterprises ("petitioner"), permittee of Station KNYN(FM),¹ Channel 256C1, Fort Bridger, Wyoming, proposing the downgrade from Channel 256C1 to Channel 256C3 at Fort Bridger, the reallocation of Channel 256C3 from Fort Bridger to Hyrum, Utah, and the modification of Station KNYN(FM)'s construction permit accordingly.² Petitioner states its intention to apply for the channel, if reallocated to Hyrum.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Hyrum is an incorporated community in Cache County (population 70,183)³ with a population of 4,829. Petitioner further states that there currently no local aural services in Hyrum, Utah. By contrast, the tiny community of Fort Bridger, although incorporated, has a

¹Call sign was effective July 13, 1998.

²We note that on April 1, 1999, the construction permit for Station KNYN(FM) at Fort Bridger, Wyoming, was assigned from L. Topaz Enterprises, Inc., to M. Kent Frandsen and is pending consummation.

³All population figures are taken from the 1990 U.S. Census.

population of only 150 people. Petitioner asserts that Fort Bridger is located in a sparsely populated rural area and does not possess a business community of sufficient size to support a commercial radio station. Petitioner further asserts that the reallocation of Channel 256C3 from Fort Bridger to Hyrum, does not constitute the removal of a sole local service since Station KNYN(FM) has never been on the air. Furthermore, Fort Bridger will continue to receive reception service from stations in Evanston and Green River, Wyoming. Lastly, petitioner claims that the allotment of Channel 256C3 to Hyrum, Utah would further the objectives of Section 307(b) of the Communications Act of 1934, as amended, by providing a first local service at Hyrum, Utah, a community more than 30 times more populous than Fort Bridger, Wyoming.

3. We believe that the proposal warrants consideration since the reallocation of Channel 256C3 from Fort Bridger, Wyoming, to Hyrum, Utah, could provide the community with its first local aural transmission service. Since Station KNYN(FM) is not on the air, the reallocation would not result in the removal of an "existing service" at Fort Bridger. However, since petitioner seeks to change its transmitter site, petitioner is requested to provide a potential gain and loss area study. Moreover, our engineering analysis has revealed that the proposed allotment of Channel 256C3 at Hyrum would provide a 70 dBu signal over 100% of the Logan, Utah Urbanized Area. Therefore, petitioner is also requested to provide a Tuck analysis to show that Hyrum is sufficiently independent of Logan to merit a first local service preference, or whether it should be credited with all of the authorized aural services in the Logan Urbanized Area.³ An engineering analysis has determined that Channel 256C3 can be reallocated to Hyrum in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.4 miles) north at petitioner's requested site.⁴ As requested, we shall propose to modify Station KNYN(FM)'s construction permit to specify operation on Channel 256C3 at Hyrum, Utah, as its new community of license. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 256C3 at Hyrum, or require petitioner to demonstrate the availability of any additional equivalent class channel for use by such parties.

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

³See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

⁴The coordinates for Channel 256C3 at Hyrum are 41-38-35 North Latitude and 111-51-10 West Longitude.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Fort Bridger, Wyoming	256C1	--
Hyrum, Utah	---	256C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 16, 1999**, and reply comments on or before **August 31, 1999**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Dale A. Ganske, President
L. Topaz Enterprises, Inc.
5546-3 Century Avenue
Middleton, Wisconsin 53562
(Petitioner)

M. Kent Frandsen
P.O. Box 570
Logan, Utah 84321
(Assignee of Station KNYN(FM))

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW A-325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 12th Street, S.W., Washington, D.C.